IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8410 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI S. PRAJAPATI

Versus

KALOL MUNICIPALITY AND OTHERS.

Appearance:

MRS D.T.SHAH for petitioner

MR PATEL M.I. for respondent nos. 1 and 2

MR SOLI UNWALA for rspondent no.3

MR VM PANCHOLI for respondnet no.4

CORAM : HON'BLE MR. JUSTICE S.K.KOSHOTE

Date of Decision : /03/2000

C.A.V. Judgment

1. In this Special Civil Application, the petitioner prayed for following reliefs :

A. to issue a writ or writs in the nature of

mandamus and/or prohibition and/or any other writ, or writs or orders or directions to set aside the order dated 24.2.1993.

B. further be pleased to direct respondents nos. 1 and 2 to implement settlement Annexure.A.

C. to grant any other relief as justice may require in the interest of justice.

Under the order dated 24th Februrary,1993, the Collector Mahesana on the application of respondent no.3 held that the resolution of the Kalol Municipality respondent no.3 herein, under which it resolved to sell the disputed land of the petitioner is bad in law.

2. The facts of the case in brief are that the petitioner is the resident of Kalol town. His father was the owner of land of Survey No. 510/2. The respondent no.1 acquired the land of the petitioner. The compensation to be paid to the petitioner for this acquisition of his land was determined. The petitioner dissatisfied with this amount of compensation which he considered to be towards lower side, taken the matter in reference before the Civil Court. The Civil Court allowed the Reference of the petitioner and granted additional amount of compensation to the petitioner. The respondent no.1 filed appeal in this Court against the judgment of Reference Court. The petitioner filed cross-objections. Two appeals of the respondent no.1 came to be rejected. On being asked by the Court, it is admitted by the learned counsel for the parties that the cross-objections of the petitioner could not be decided by the Court along with the appeals of respondent no.1 as the same were not available on the record. In the cross-objections, the matter has been settled by the petitioner and the respondent no.1. The terms of the settlement are there on the record of this Special Civil Application as annexure-A at page-7. On the land of the petitioner acquired, the respondent no.1 proposed to raise construction thereon of a shopping center. In lieu of payment of the amount of the additional compensation, the respondent no.1 agreed to give to the petitioner three shops in this proposed commercial complex. This is agreed upon by the petitioner. On the basis of this compromise, the cross-objections of the petitioner were came to be decided on 15th July,1991 by the Court. The respondent no.3 challenged the resolution of the respondent no.1 under which it has resolved to compromise

the matter with the petitioner with two other resolutions before the Collector, Mahesana. This challenge to those resolutions of the respondent no.1 was accepted and resolutions were held to be invalid and illegal by the Collector, Mehesana. Hence this Special Civil Application.

3. Mrs.D.T.Shah learned counsel for the petitioner raised two fold contentions in support of the case of the petitioner. Firstly, it is contended that the right to get the three shops accrued to the petitioner under a settlement in the judicial proceedings before this Court and decree is also passed in his favour. The Collector before passing impugned order should have given a notice and opportunity of hearing to the petitioner which has not been done. The effect of the impugned order of the Collector is to nullify a consent decree passed by this Court. The second contention raised is that once the matter has been compromised between the parties and decree has been passed in favour of the petitioner by this Court, the Collector Mahesana has no jurisdiction to interfere in the matter.

4. In contra, the learned counsel for the respondents supported the order of the Collector, Mahesana. The learned counsel for the respondent no.3 submitted that the land in dispute was reserved in the Town Planning Scheme for the use of the public utility service i.e. for garden and later on this land has been handed over by the respondent no.1 to the Rotary Club, Mahesana for its development for the public purpose. He further submitted that the Rotary Club, Mahesana is developing this land as a playground for children.

5. In rejoinder, Mrs. D.T.Shah learned counsel for the petitioner submits that the petitioner is no more interested to have the three shops as per the settlement. What she submits that the petitioner cannot be subject to doubly losses. He will not get the shops and at the same he shall also be deprived of amount of additional amount of compensation.

6. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

7. It is not in dispute that the appeals filed by the respondent no.1 against the award of the Reference Court have already been dismissed by this Court. The petitioner filed cross-objections. He claimed the amount of the additional compensation more than what it is

awarded by the Reference Court. The cross-objections of the petitioner were not decided by this Court on merits for the reason that the parties have settled the matter. On this settlement, the corss-objections of the petitioner were disposed of. The learned counsel for the respondent no.1 submits that after decision of the Collector, Mahesana impugned in this Special Civil Application, the respondent no.1 has already filed the Miscellaneous Civil Application in this Court for the review of its order dated. 15th July,1991 passed on cross-objections of the petitioner and that application is pending.

8. The Collector, Mahesana under its impugned order has held, (i) that under the resolutions, respondent no.1 has resolved to transfer three shops to the petitioner, the value of which exceeds Rs. 1,00,000/and it could have been permissible only after approval of the State Government. (ii) the land in dispute is reserved in the town planning scheme for the public utility services and the respondent no.1 cannot put it to any other purpose.

9. The learned counsel for the petitioner does not dispute that the value of these three shops was more than Rs. 1,00,000/-. In this admitted factual position, the resolution passed by the respondent no.1 for transfer of three shops to the petitioner certainly hits by the provisions of Section 65 of Gujarat Municipality Act,1965. Without prior sanction of the State Government, the respondent no.1 was not competent to pass the resolution. The Collector, Mahesana has not committed any illegality in holding that this resolution is bad in law. So far as the second ground is concerned, the learned counsel for the petitioner does not dispute that the land in dispute was reserved for public utility services in the town planning scheme. The resolution of the respondent no.1 is wholly arbitrary and unjustified on both counts. It is not a personal work or a shop of the members of the respondent no.1 to take any resolution. The respondent no.1 is a constitutional body and it is thereto provide facilities, amenities and to look and take care of the citizens. Otherwise also once a land has been reserved for public utility services in the town planning scheme, it cannot be permitted to be put to use for some other purposes by the respondent no.1. It is to be kept and used only for the purpose for which it is reserved in the town planning scheme.

10. It is true that the Collector, Mahesana before passing of the impugned order has not given any notice or opportunity of hearing to the petitioner. Leaving apart

whether under the relevant provisions of the Gujarat Municipality Act,1965, in the proceedings of the nature which were pending before the Collector, Mahesana, a notice to a person other than Municipality has to be given or not, leaving apart the validity, propriety and correctness of the resolutions of the respondent no.1, the rights are being accrued to the petitioner and the order of the Collector, Mahesana impugned in this Special Civil Application, certainly may adversely effect his right and before making of the same notice or the opportunity of hearing may have to be given to the petitioner. But a larger question does arise whether only for this inaction or omission on the part of the Collector, Mahesana, this Court has to interfere in the matter and to set aside the impugned order. Here fruitfully, the reference may have the decision of the Apex Court in the case of M.C.Mehta v. Union of India reported in JT 1999 (5) SC 114.

11. The learned counsel for the petitioner has failed to show what possible defence could have been placed in the matter before the Collector, Mahesana by the petitioner. The learned Counsel for the petitioner further failed to show how the decision of the Collector, Mahesana in this matter would have been in favour of the petitioner. The only contention made is that the compromise has been accepted by this Court and accordingly the decree has been passed and the Collector, Mahesana has no power to hold the resolution to be invalid. I do not find any substance in this contention. This Court has not examined the legality, propriety and the correctness of the resolution of the respondent no.1. The respondent no.3 was not a party to the First Appeal or the cross-objections before this Court. The Collector, Mahesana was also not a party. In fact, the legality, propriety or the correctness of the resolution of the respondent no.1 was not in question before this Court. The matter would have been different where this Court would have decided that the resolution of the respondent no.1 are legal and incorrect, then the Collector, Mahesana may not have any power to interfere in the matter, but the converse is not true. If what learned counsel for the petitioner contended is accepted then possibility of committing the fraud with the development scheme and bypassing of the mandatory provisions of the law by the respondent no.1 cannot be overruled. In case this contention of the learned counsel is accepted then this resolution will have effect to modifying the town planning scheme which power does not vest in the respondent no.1. This resolution will detrimental to the interest of the public at large. The

respondent no.1 is there to see that its action may not come in the way of the development of the town as well as deprival of public utility services to the resident of the area. This resolution passed by the respondent no.1 is against the public interest. Possibility of some foul play for extraneous consideration in passing of this resolution by the members of respondent no.1 cannot be overruled. On a land which is reserved for public utility services the respondent no.1 has no right to put any commercial complex thereon. The respondent no.1 is not a commercial establishment and nor is a trader. Its sole existence is there to take care for the welfare of and providing civil amenities, public utility services etc. to the residents. In the facts of this case, only on this ground of breach of principles of natural justice made in passing of the impugned order, the said order cannot be quashed and set aside in these proceedings. The substance and the larger interest of the residents of the area, is a predominate consideration. Even where the court has to draw a balance in between the alleged breach of the principles of natural justice made in passing of the impugned order and the interest of the public at large, certainly the balance may tilt in favour of the later. Otherwise also, the learned counsel for the petitioner is not very much serious for the claim of the petitioner of three shops. That appears to be for reason that the petitioner realize that the resolution of the respondent no.1 on the basis on which he got his matter settled are not legal. In these proceedings, this Court cannot decide anything regarding claim of the petitioner of the additional compensation. Once the competent authority held that resolutions which are passed for the compromise of the matter by the respondent no.1 are not legal, the consequence thereof is that the settlement made on the basis of same is also not legal. For this claim, now the petitioner has only remedy to approach the Court in the cross-objections which have been decided. The review application has already been filed by the respondent no.1. Two options are open to the petitioner, either to join itself in that review application as a petitioner or to file a separate review application. For this right of petitioner, this Court will take care in those proceedings i.e. cross-objections of the petitioner in the appeal filed by the respondent no.1 and not in these proceedings. As a result of the aforesaid discussion, the Special Civil Application fails and same is dismissed. Rule discharged. Interim relief, if any, granted is vacated. The petitioner is directed to pay Rs. 500/- as costs of this Special Civil Application to the respondent no.4.

(S.K.Keshote, J)

(Vipul)